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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

Supreme Court, U.S.
FILED
AUG 17 1987
JOSEPH F. SPANIOL, JR.
CLERK

THE PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

vs.

SUSAN KAIL,
Respondent.

RESPONSE TO PETITIONER'S ASSERTION OF REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
RESPONSE TO PETITIONER'S ASSERTION OF REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI	2-4
CONCLUSION	5

TABLE OF AUTHORITIES

Page

United States v. Sacco, 428 F.2d 264 (9th Cir. 1970) 3

People v. Mantel, 388 N.Y.S.2d 565 (N.Y.Crim.Ct. 1976) 2,3

W. LaFave & J. Israel, Criminal Procedure, §13.4 (1984) 3

STATEMENT OF THE CASE

Petitioner's statement of the case is acceptable with the following exceptions and additions:

The petitioner asserts merely that the Champaign Police Department followed a policy of strict enforcement of all city ordinances in the downtown business area as a method of combatting prostitution. More accurately, the policy was strict enforcement of city ordinances only against suspected prostitutes. People v. Kail, 150 Ill.App.3d 75, 501 N.E.2d 979, 981 (4th Dist. 1986).

Additionally, the bicycle ordinance was generally not enforced at all; the arresting officer testified that during her three years of employment with the police department, she had seen "hundreds," if not "thousands" of bicycles without bells being ridden around the Champaign university campus, and had never arrested anyone for that offense. 501 N.E.2d at 981-82.

RESPONSE TO PETITIONER'S ASSERTION OF REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

THE EQUAL PROTECTION ANALYSIS OF THE COURT BELOW IS CORRECT. PETITIONER'S ASSERTION THAT THE LOWER COURT'S OPINION IS IN CONFLICT WITH ANOTHER APPELLATE DECISION IS ERRONEOUS, AND THE ASSERTION THAT THE SELECTIVE ENFORCEMENT POLICY IS PERMISSIBLE IF THERE EXISTS A RATIONAL RELATIONSHIP BETWEEN THE POLICY AND A STATE INTEREST IS INCORRECT.

The State would limit the inquiry here to the constitutionality of a policy of enforcing a law that is unrelated to prostitution only against suspected prostitutes (and no other persons) in order to control prostitution. The State's analysis does not take into account the fact that in this case, the bicycle bell ordinance is not (or at least rarely) enforced against anyone except suspected prostitutes. Aside from the repugnant notion that the police should be permitted to interfere with one's liberty based on what the police decide is a person's reputation, such a policy simply offends elementary equal protection principles that those who are similarly situated be similarly treated. In Champaign, Illinois, all who are not suspected prostitutes can ride unbelled bicycles with impunity. But woe to the person whom the police label a "suspected prostitute."

The State relies on People v. Mantel, 388 N.Y.S.2d 565 (N.Y.Crim.Ct. 1976) for the proposition that the selective enforcement in this case is permissible. However, Mantel is distinguishable from this case. There, the City of New York had a policy of strictly enforcing health, fire and building regulations against sex-related establishments in the downtown area. The court declared that this was permissible because "any area of activity [of sex-related establishments in this case] that carries with it a high incidence of crime is an appropriate choice for strenuous law enforcement." 388 N.Y.S.2d at 569. It was not disputed that a high incidence of crime and a general deterioration of the area (hence the reasons for code-enforcement) were associated with the proliferation of businesses catering to commercial sex. Id. at 567. To apply the same reasoning to the instant case would require the conclusion that bicycle riding is associated with a high incidence of prostitution.

The same analysis can be applied to the case of United States v. Sacco, 428 F.2d 264 (9th Cir. 1970), which is cited in the dissenting opinion in Kail and appears in a discussion from LaFave and Israel's treatise on criminal law. W. LaFave & J. Israel, Criminal Procedure, §13.4 (1984). Those commentators noted that in a selective prosecution case, the "extent of vulnerability depends upon the nature of the statute under which the prosecution is brought." Id. In Sacco, defendant complained that he was singled out for prosecution under the federal alien registration laws simply because he was suspected of being involved in organized crime. The court, justifying the selective enforcement policy, noted that the purpose of the alien registration laws was to further the legitimate governmental interest in preventing non-law-abiding aliens from living in this country. The standard for the selective enforcement policy (suspected role in organized crime) was rationally related to the purpose of the alien registration law. Again, applied to this case, suspected status as a prostitute has no rational relation to the purpose of the bicycle bell ordinance. This is consistent with the analysis in the Mantel case.

The selective enforcement policies in Sacco and Mantel were constitutionally permissible because there was a rational relationship between the three elements involved: the class member, the law being enforced, and another legitimate governmental objective. Selectively enforcing the alien registration laws against those suspected of crime was permissible because the alien registration laws were aimed at government monitoring of non-law-abiding aliens. Selectively enforcing the building codes against sex-related establishments was permissible because there was a relationship between the incidence of crime and physical deterioration of a neighborhood and sex-related establishments. In the instant case, there is no relationship between the policies underlying the bicycle ordinance and prostitution.

The dissenting judge in the instant case concluded that as long as the persons to whom the selective enforcement policy is

applied are not members of a "suspect" class, he did "not deem one prosecuted upon a showing of probable cause to be unduly prejudiced by the prosecution." The dissent failed to consider that this statute was generally not enforced. Status as a reputed prostitute may not be a suspect class for equal protection purposes, but it is arbitrary and irrational for the State to attempt to control prostitution by making riding a bicycle without a bell a crime only for suspected prostitutes.

CONCLUSION

For the foregoing reasons, respondent requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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